OCCULT COMPENSATION.

THE process known to moral theologians as Occult Compensation furnishes an interesting chapter to the history of ethics. It signifies that when a man has a valid claim which he is unable or unwilling to substantiate by legal process he can without sin compensate himself by stealing an equivalent from the debtor. It is thus a survival from the primitive stage of barbarism, before society had advanced to settled laws and machinery for their enforcement, when the safety of each individual's life and possessions depended upon the force or cunning with which he could protect them. With the advance of civilization it has been the earnest effort of all lawgivers to suppress this natural instinct; the preservation of social order depends on its renunciation and on the readiness of the citizen to submit even to an occasional injustice rather than to take the law into his own hands, to be judge in his own case, and to vindicate his rights, real or supposed, by violence or fraud. Human nature is too frail to be intrusted with the power of determining, under the pressure of self-interest, when the eternal law prohibiting rapine and theft shall cease to operate.

In this both the ecclesiastical and the civil authority agreed during the earlier ages of Christianity. The spoiling of the Egyptians by the Hebrews to compensate themselves for their hard and unpaid labors—a favorite precedent for the theologians—was explained by St. Augustin as justified only by the special command of God: the chosen people would have sinned if they had done it of their own will or simply by command of Moses, and perhaps they sinned if they desired to do it.* The imperial jurisprudence was equally emphatic. A law of Gratian in 376 forbids any one from acting as judge in his own cause.† One of Valentinian II. in 389 declares that

* S. Augustin. contra Faustum Lib. XXII. c. 72. See also Augustin. Quæstt. in Heptateuch. Lib. II. c. 39, which is carried into the collections of canons (Reginon. de Discip. Eccles. Lib. II. c. 273; Burchardi Decret. Lib. XI. c. 53).

† L. 1 Cod. Theod. Lib. II. Tit. ii.—Const. 1 Cod. III. v.

he who attempts to right himself, in place of awaiting judicial action, shall forfeit the value of the thing for which he ought to have litigated,* and in the Justinian jurisprudence this assumed the shape of a rule that if any one attempted to seize a thing which he believed to be his own in the possession of another, he lost the ownership, if it proved to be his, and if not he was obliged to restore it and forfeit in addition its value.† So careful were the limitations imposed on individual action that if a thief sold a stolen article the owner could not take from him by force the money received for it without being liable to an action for theft: the sum realized from a theft is not the thing stolen and is not itself stolen.‡ The utmost latitude allowed was that a man could secretly remove an object which he had lent, without being subject to prosecution for theft, provided the borrower had no claim for expenses incurred on it.§ All private vindication of right, real or supposititious, was thus condemned equally in the *forum internum* and the *forum externum.*

As social order reconstituted itself after the Barbarian conquests, these principles held good in the *forum externum.* The early codes show throughout the earnest effort of the legislators to bring the turbulent races to settled methods of procedure, and the only indication I have found in them recognizing any right to retake property is a provision in the Longobard law allowing a man to clear himself by oath when he has seized a horse or other animal belonging to another, believing it to be his own.‖ We shall see hereafter that the secular courts throughout the Middle Ages recognized no justification for theft in the fact that the thief was only endeavoring to make good a claim.

As for the *forum internum,* the Penitentials, in their prescriptions for theft, make no allusion to any extenuation arising from compensation. On the contrary, many of them seek to enforce the command of the Sermon on the Mount (Matt. v.

---

* L. 3 Cod. Theod. Lib. IV. Tit. xxii.

† Institt. Justin. Lib. IV. Tit. ii. § 1. Cf. Const. 7 Cod. VIII. iv.

‡ Fr. 48 Dig. XLVII. ii. § Fr. 15, 59 Dig. XLVII. ii.

‖ L. Langobard. Rotharis, 347.

39–42, Luke VI. 29, 30) by ordering that if a man recovers from a thief that which has been stolen he shall give it to the poor.* The same absence of allusion to compensation is observable in the collections of canons which served as guides in the courts of conscience from the tenth to the twelfth century; and when, in the second half of the latter, the canon law became interpenetrated with the civil law, the *Summa* of Bernard of Pavia, in its elaborate definition of all species of theft, observes the same silence.† Gregory IX. indeed positively prohibited a creditor from compensating himself out of a deposit made with him by a debtor;‡ whence, oddly enough, when subsequently occult compensation came into vogue, deposits with the creditor were excepted from among the things on which it could be exercised.

The first indication of a tendency to recognize such a principle is manifested in a passage of S. Ramon de Peñaforte, in which he quotes the section of the Institutes referred to above, and says that if a man believes a thing to be his and that he has a right to take it, he does not commit theft, but is to be punished otherwise.§ A few years after this, Alexander Hales treats the subject more at length. It was a question which, in those ages of turbulence, must have frequently arisen, and the efforts of legislators continued to be directed to the repression of the ever-recurring tendency to obtain satisfaction by violence or fraud. Thus Hales tells us that, if a man loses a thing by rapine or theft, he can, while his blood is hot, retake it by force or theft; but if an interval occurs, and there is time for passion to cool, he is guilty of theft, and is liable to punishment by the secular courts; by the divine law, however, he is not held to restitution if without scandal he recovers his property or its

---

* Pœnitent. Bigotian. III. ii. § 2 (Wasserschleben, Bussordnungen, p. 452).—Pœnit. Cummeani c. viii. § 4 (Ib. p. 483).—Pœnit. XXXV. Capit. cap. xxii. (Ib. p. 518).—Pœnit. Pseudo-Theodori c. x. § 5 (Ib. p. 594).

† Bernardi Papiens. Summæ Decretalium Lib. v. Tit. xxvi.

‡ C. 2 Extra, III. xvi.

§ S. Raymundi Summæ Lib. III. Tit. vi. § 1. "Si aliquis credebat rem esse suam et sibi licere rem suam surripere, non committit furtum liceat alias teneatur."

equivalent, whether openly or secretly.* He adds a remark which is of interest, as the first utterance on a question which has remained a subject of debate to the present time, and also as showing how thus far the matter was confined to the recovery of some definite object taken, and how little the schoolmen imagined that the claim could be expanded to cover demands of other kinds. Servants, he says, whose wages are not paid cannot steal from their employers, for the master's property is not, and never has been, the servant's; the debt cannot make it so, but only that it ought to be so.† A few years later Cardinal Henry of Susa, in treating at much length on all related questions, makes no allusion directly to this, except to say that a man cannot compensate himself out of a deposit; he seems to know only the legal methods of obtaining restitution, save when in hot blood a man regains possession by force.‡

That the alleged principle, however, was commencing to attract attention is shown in its condemnation by Aquinas, who says that he who secretly retakes an article unjustly detained by another commits sin; he does not injure the detainer, and therefore is not required to make restitution, but he sins against common justice in usurping judgment to himself and pretermitting the settled order of law.§ Soon afterwards a forward step in the evolution of occult compensation occurs in the remark of Henry of Ghent that if a steward or factor is a creditor of his principal, and if something belonging to the latter comes secretly into his possession, although as a rule a man cannot take the law into his own hands, still in this case it is conceded to him to do so as a minister of the law and

---

* Alex. de Ales Summæ P. IV. Q. xxiv. Membr. 5, Art. 3. The ecclesiastical definition of "scandal" is that which gives occasion to sin in others.

† Ibidem. "De serviendo vero patet dici quod nec in tempore negatæ mercedis nec post, licitum est ei spoliare dominum suum: quia nihil quod dominus habet est vel fuit servientis, neque ipse serviendo et jam completo servitio effecit quod suum esset, sed quod suum debeat esse."

‡ Hostiens. Aureæ Summæ Lib. II. *De Causa Proprietatis* § 7; *De Restitutione Spoliatorum* § 1.—Cf. Lib. V. *De Furto* §§ 1, 2.

§ S. Th. Aquinat. Summæ Sec. Sec. Q. LXVI. Art. 5 ad 3.

special judge.* Here at length we find introduced the conception of compensation for a debt, and not the mere reclaiming of an object unjustly detained; and this is the only importance of the dictum, for we hear nothing more of the special case on which it is based.

For a while the decretal of Gregory IX. and the views of Aquinas continued to be the rule. John of Freiburg about 1300 and Astesanus de Asti in 1317 are virtually at one in saying that no compensation can be taken from a deposit in the hands of a creditor, and that any one who steals a thing belonging to him and unjustly withheld by another commits sin; he is not obliged to restore it, but he must render satisfaction to God, and must labor to remove any scandal which he may have caused to his neighbors. Astesanus, moreover, quotes Richard Middleton as assenting to this.† It was not long after this that Pierre de la Palu was the first to suggest the modern teaching, in opposition to his fellow-Dominican Aquinas. Incidentally he asserts that a man can retake by stealing anything that has been stolen from him; that a subject, as well a judge, has a right of vindication, for otherwise the Hebrews sinned in spoiling the Egyptians and all wars would be unjust.‡ This new view did not commend itself to immediate acceptance. In 1338 Bartolommeo da S. Concordio copies the Institutes in saying that he who takes what he believes to be his does not commit theft, but is to be otherwise punished; and a century later his commentator Niccolo da Osimo explains that he thus loses the right he possessed in the article, and that if it proves not to be his he must restore it and forfeit as much again in penalty of seeking to make law for himself.§

While Niccolò thus held fast to the ancient lines, his con-

---

* Henrici Gandavens. Quodl. VI. Q. 27. I quote this at second hand, not having access to the works of the *Doctor Solennis*. I find it cited in the *Somma Pacifica*, c. 10, and in *Zuccherii Decisiones Patavinæ* Mart. 1708, Q. II. n. 7.

† Jo. Friburgens. Summæ Confessorum Lib. II. Tit. vi. § 7.—Astesani Summæ de Casibus P. I. Lib. I. Tit. xxxiii. Art. 3, Q. 3; Lib. V. Tit. xxix. Art. 2, Q. 4.

‡ P. de Palude in IV. Sententt. Dist. xxxv. Q. ii. Art. 4, Concl. 3.

§ Summa Pisanella s. v. *Furtum*, in corp.

temporary the Dominican St. Antonino of Florence cut loose from Aquinas and formulated the principle of occult compensation in nearly the shape in which it has continued to the present day. It is true that he copies Bartolommeo, but he adds that a man has a right to compensate himself by recovering, secretly or otherwise, anything withheld from him unjustly through theft or rapine, usury or fraud. This right, however, is subject to seven conditions, which are worth enumerating, as they form the basis of all subsequent rules and were doubtless only the expression of what was gradually taking shape in the schools. The first condition is when the creditor cannot obtain his dues by personal application or through the courts. The second, that it must be a matter subject to the ordinary and common law, for no one can be a judge in his own cause. The third, that it must not be a doubtful claim. The fourth, that there must be no likelihood of scandal or injury to others, who may be accused of the theft. The fifth, that the creditor shall not run the risk of being reputed a thief through inability to prove the debt. The sixth, that he shall not imperil life or limb by being accused of the theft. The seventh, that he does not act against his own conscience, but believes that he has a right to do so, and is not prepared to commit perjury in case he is prosecuted for it.* An important feature of this is that the permission to steal is no longer confined to recovering an object unjustly detained, but is extended to ordinary claims, including those arising from the payment of interest on loans, which was always recoverable in the ecclesiastical courts; this alone opened a wide sphere of action, for usury, though under the ban of the canon law, was the commonest of offences.

Not long afterwards Pacifico da Novara follows St. Antonino and develops the subject still further. The claim may arise from any cause, including injuries suffered, thus enabling men to estimate their wrongs and redress themselves; the claimant is warned that if he is detected he will be punished as a thief, and he may be induced to commit perjury in the effort to escape; if the crime is imputed to another he must secretly

* S. Antonin. Summæ P. II. Tit. i. cap. 15, § 1.

return the article stolen and not attempt again to compensate himself; if the debtor should ignorantly pay him subsequently he must secretly return the amount, and in any case he must provide for such contingency by warning his heirs not to receive it after his death; he must also be conscientious in valuing his claim and not take more than will strictly settle it. Still, with all this, occult compensation is a sin to be confessed —a very grave sin if the debt could be collected by legal process, but the perpetrator is not required to make restitution. If, as was customary, the loser should cause an excommunication of the unknown thief to be published, he can confess to the priest or bishop, if they can be trusted to maintain secrecy, and can ask to be excepted from the intention of the excommunication; but if this is attended with risk he can rest in peace and disregard it.*

From all this we can see how gradual and how tentative was the development of the practice, and how, even in the permission, there still lurked a consciousness that it was wrong. Nor was it as yet universally admitted. Few authorities at the end of the fifteenth century had wider or more enduring reputation than Angiolo da Chivasso, who gives the law as laid down in the Institutes and contents himself with the remark that this is the secular law, but that the divine law is different.† Baptista Tornamala briefly repeats Bartolommeo da S. Concordio.‡ Bartolommeo de Chaimis only says that if property of a debtor who will not pay falls into the hands of a creditor he can retain it if no evil or scandal is caused.§ Still the practice made progress, though slowly and irregularly. Cardinal Caietano justifies it by natural law which has been impeded by civil law.‖ Prierias is evidently somewhat puzzled; he agrees with Aquinas and Richard Middleton that it is a sin, but that the property stolen need not be restored, and he adds that the doctors

* Somma Pacifica cap. 10.

† Summa Angelica s. v. *Furtum* §§ 3, 6.

‡ Summa Rosella s. v. *Furtum*, in corp.

§ Bart. de Chaimis Interrogatorium, Venetiis, 1480, fol. 33^{b}.

‖ Caietani Summula s. v. *Furtum*.

hold that there is no sin if six conditions are observed—conditions similar to those already mentioned.* Giovanni da Taggia is even more reserved; theft is not committed on one's own property, but an assertion that the thief believes it to be his own is not to be received, for thus every one would readily escape, and his definition of *compensatio indirecta* is merely that if a debtor's property happens to come without fraud into the hands of a creditor he can detain it until the claim is settled.† Rosemond adheres more closely to Aquinas: a man sins who retakes his property, forcibly or secretly, but he is not required to make restitution.‡ Pope Adrian VI., who was a learned theologian before Charles V. made him a cardinal, is quoted as teaching that although in the interest of public peace the law prohibits a man from thus righting himself, yet in the forum of conscience he cannot be required to make restitution, and he even extends the privilege to the loser at dice, who can thus recover his losses from the winner.§ Towards the middle of the sixteenth century Bartolommeo Fumo holds that there is no sin in a man retaking furtively what is his own, provided he can get it in no other way and avoids the risk of scandal; he is not making a law unto himself, but is following the natural law, of which the civil law deprives him.‖

The second half of the century saw the rise of the school of able and acute men who built up the new science of Moral Theology, who explored with exhaustless subtilty every possible aspect in which sin can be viewed, and whose refined distinctions sometimes argued away the existence of sin itself. Though not identified with this school, and though at times complaining of their endless disputations and audacious argumentation, Azpilcueta, the renowned *Doctor Navarrus*, shows their influence in the detailed investigation which he devotes to occult compensation. It is a mortal sin if the claim can

* Summa Sylvestrina s. v. *Furtum* §§ 16, 17.

† Summa Tabiena s. vv. *Furtum, Compensatio* § 1.

‡ Godscalci Rosemondi Confessionale, Antwerpiæ, 1519, fol. lxxxiii.

§ Alfonsi de Castro de Potest. Legis pœnal. Lib. I. c. 10, Arg. 4.

‖ Armilla Aurea s. v. *Furtum* n. 5.

readily be enforced at law, or if the claimant exposes himself to risk of life or limb through condemnation for the theft, or if he believes it to be a sin, or if he foresees that it will cause much scandal. It is no sin, however, if legal recovery is impeded by partiality of a judge, or if the expense is disproportionate to the value, or if legal action will lead to quarrels and loss of friendship, while restitution is due to any third party who may be exposed to corporal or spiritual damage. The claimant must steal no more than will satisfy his claim; the debtor must not be allowed to pay it over again, and the claim must be just and indubitable—a point on which he says that many deceive themselves. Under these circumstances the claimant can disregard any excommunication published against the thief, even if it includes those who may have committed the theft in compensation. Even articles pledged or deposited with the debtor can be taken, provided it does not expose him to too great injury; although this is denied by some authorities. If the claimant is prosecuted he will not commit perjury in swearing that he does not know the thief, for he can use the mental reservation that it is not a theft. If there is a doubt as to his ownership of the article taken he sins in stealing it, though he is not required to make restitution.*

Cardinal Toletus gives the same general rules, the only important modification being that if grave injury is caused to innocent third parties the thief must confess and restore the article stolen.† This feature of the matter is important, for such injury to others is an almost invariable accompaniment of occult compensation, and we shall see that later moralists were less nice. Bishop Angles adds another condition—that the article stolen be not specially necessary to the debtor, for in such case it is a sin to rob him.‡ This perpetual variation of limitations, which we shall find continue, indicates how difficult the theologians found it to justify the practice to themselves. There was no recognized standard. On the one

---

* Azpilcueta Manualis Confessarior. cap. xvii. nn. 112–17.

† Fr. Toleti Instruct. Sacerd. Lib. v. cap. xv. nn. 3–5.

‡ Jos. Angles Flores Theol. Quæstt. P. II. fol. 95–6 (Venetiis, 1584).

hand, a contemporary authority suggests usury as a substitute for theft, though usury was a sin much graver than stealing; a man unable to collect a debt or to enforce a claim arising from injury endured can compensate himself by lending on interest until the gain satisfies the wrong.* On the other hand, Pelbartus de Temeswar, one of the last of the scholastic theologians, strictly follows Aquinas, and refuses to recognize that there is no sin in such an act.† Henriquez assumes a somewhat self-contradictory attitude; it is a mortal sin, and yet the thief and his accomplices are not bound by an excommunication uttered against them, even though its terms specially include such acts.‡

Thus far, occult compensation was purely the creation of the theologians, without any authoritative definition by the Church. This latter came with the issue in 1607 of the only expurgatory Index attempted by the Holy See. Manuel Sa's *Aphorismi Confessariorum*, issued in 1595, was one of the books subjected to its censorship, which disapproved of his paragraph on this subject, and ordered it erased and the following substituted, which may therefore be accepted as embodying the official opinion of the Church: "If you cannot conveniently otherwise collect a debt, you can take it secretly, provided you are careful that the debtor shall not pay it a second time, and that it is done without scandal or danger of reputation or life to you or to others; nor are you held to reveal it even if a prelate orders this under pain of excommunication, if it is probable that on revealing it you will be forced to make restitution, nor are others obliged to reveal it, if they know for certain that you have received it justly." A subsequent passage authorizing the retention of what is stolen, even if there is doubt as to your ownership, passed the censorship without alteration.§

---

* Agost. Montalcino, Lucerna dell' Anima, cap. xiv. § 10, nn. 4, 5 (Venetiis, 1590).

† Pelbarti de Themeswar Sacræ Theologiæ Rosarium s. v. *Furtum* § 7.

‡ Henriquez Summæ Theol. Moral. Lib. XIII. c. xxi. n. 1 (Venetiis, 1600).

§ "Debitum tibi, si non potes aliter commode recuperare, potes clam tollere, modo cures ni creditor [*potius* debitor] iterum solvat, et id fiat sine scandalo et

The first half of the seventeenth century witnessed the marvellously rapid growth of probabilism and casuistry, leading in many cases to conclusions deplorably lax. Occult compensation did not escape the scrutiny of the theologians of the new school; it was universally accepted as justifiable, and, while some still held to the old limitations, others extended its sphere of action. Forcible seizure was generally recognized as not permissible, though burglary could be committed; false swearing with mental reservation was recommended to those unlucky enough to be suspected and prosecuted; it was not necessary to await the maturity of a debt if the creditor feared that the debtor would not pay when due; an uncollectable claim against a prince could be recovered by cheating the revenue, even though this were farmed out, and Juan Sanchez goes so far as to assert that claims not recoverable at law, such as gambling and outlawed debts, can thus be made good. There was still sufficient reminiscence of the origin of the practice in the retaking of a certain object, for some authorities to insist on stealing being confined to articles of the same general nature as those from which the claim had arisen, although this of course could not be made to apply when a recompense was sought for insults, blows, or defamation.*

---

sine periculo tuæ vel alienæ famæ aut vitæ, neque teneris revelare etiam si prælatus præcipiat sub pœnam excommunicationis, si est probabile quod revelans cogeris restituere, imo neque tenentur alii quicunque sint si certo sciant te hoc modo juste recipisse."—Index Brasichellensis, p. 351 (Bergomi, 1608); Sa, Aphorismi Confessar. s. v. *Debitum* (Venetiis, 1617).

"Si accepisti quod dubitas an tuum esset, debere te restituere quidem aiunt, alii negant, quod in dubio melior est conditio possidentis: quæ opinio locum non habet quando res jam erat in alterius possessione." Sa, s. v. *Furtum* n. 5.

Whatever doubt there may be as to the meaning of this last passage is removed by a reference to Azpilcueta as cited above.

* Sayri Clavis Regia Sacerdot. Lib. IX. c. xiv. nn. 5–15.—Reginaldi Praxis Fori Pœnitent. Lib. XXIII. nn. 7, 8.—Laymann Theol. Moral. Lib. III. Tract. iii. P. 1, Cap. 1, nn. 9, 10.—Escobar Theol. Moral. Tract. I. n. 83.—Alphonsi de Leone de Officio et Potest. Confessarii, Recollect. XI. nn. 618–32.—Mendo Epitome Opinionum Moralium s. v. *Furtum* n. 16.—Berteau Director Confessar. p. 342 (ed. XXI., Venet. 1684).—Summa Diana s. v. *Compensare* n. 2.—Gobat Alphabetum Confessar. n. 222.—Busenbaum Medullæ Theol. Moral. Lib. III. Tract. 5, cap. 1, Dub. 1, n. 3.—J. Sanchez Selecta de Sacramentis Disp. XLIII. n. 56.

The teaching of the period is summed up by Tamburini, who says it is universally accepted by all doctors that occult compensation is permissible, even from a deposit made with a creditor by his debtor, in spite of the prohibition by Gregory IX., although anything lent to or pledged with the debtor must not be taken; the claim must be a valid one, but it need not have matured if there is a moral certainty that it will not be paid, while if the debtor will suffer loss by the anticipation allowance must be made for it; with regard to the question of a prior appeal to the courts, it may be assumed in practice that collection by legal process is always difficult; as for protecting the debtor against paying a second time, if this can easily be done by a fictitious release it is well; if not, to omit it is only a sin against charity and not against justice and does not entail restitution; if he pays you a second time you are only the cause of it *per accidens;* in the same spirit you are required to protect innocent third parties from falling under suspicion only if it can readily be done, for this also is an obligation merely of charity and not of justice, and therefore if through your negligence an innocent man is condemned to the galleys or to other severe punishment you sin gravely against charity but not against justice and are not required to make reparation; in these matters you should weigh your own advantage against your neighbor's danger, for charity requires that you should not, for a trifling consideration, bring upon him the gravest injury. If suspected, you can swear to ignorance and you can disregard excommunication. As respects the nature of the thing to be stolen, it should if possible be of the same class as that for which it is compensation, but if this is impossible you can steal anything else, and if it inflicts special damage on the debtor he has only himself to thank for it, though in this case also you should weigh your own gain against his loss.*

Naturally the class most addicted to taking advantage of this license to steal was that of employees, especially domestic

* Tamburini Explic. Decalogi Lib. VIII. Tract. ii. Cap. 5, §§ 1–3. For the numerous editions of this authoritative work between 1654 and 1755 see De Backer, Bibliothèque des Écrivains de la Compagnie de Jésus, II. 617.

servants, whose opportunities for pilfering were constant, who were accustomed to regard their wages as unjustly inadequate to their services, and who, when the principle was extended to compensation for personal injuries, were rarely without excuse arising from ill treatment, real or fancied. We have seen above how early this question arose, and how emphatically it was negatived by Alexander Hales. Prierias quotes approvingly Richard Middleton as holding that even when wages are unpaid a servant sins in compensating himself, though, in the forum of conscience, he cannot be required to make restitution.* Azpilcueta does not except servants from the benefits of occult compensation, but he says that many deceive themselves in thinking that they are justified in having recourse to it, as it is applicable only to legal claims and not to those arising from gratitude or as a recompense for zeal.† Cardinal Toletus endeavors to define the rights of servants as limited to stealing the equivalent of an amount actually due, when there has been an agreement as to wages, even if the wage is too low, provided that extra service has not been exacted; when no agreement has been made, then the current rate of wages is the standard.‡ It was easy to formulate rules, but difficult to restrain the cupidity of servants when once the way was opened to honest stealing; and Sayre repeats the complaint that many deceive themselves in thefts to which they have no right.§ The tendency to laxism showed itself in this as in other departments of the subject, and the opinion became current, especially among the Jesuit confessors, that insufficient wages justify occult compensation,‖ and, as the servant necessarily was the sole judge of the value of his labors and of the adequacy of his pay, it can readily be conceived what encouragement was given to the art of domestic pilfering. The first protest against this abuse naturally arose in France, where

---

* Summa Sylvestrina s. v. *Furtum* § 16.

† Azpilcueta Man. Confessarior. cap. xvii. n. 113.

‡ Fr. Toleti Instruct. Sacerd. Lib. v. cap. xv. n. 5.

§ Sayri Clavis Regia Sacerd. Lib. ix. cap. xiv. n. 6.

‖ Laymann Theol. Moral. Lib. iii. Tract. iii. P. 1, cap. 1, n. 10.—Busenbaum Medullæ Theol. Moral. Lib. iii. Tract. 5, cap. 1, Dub. 1, n. 3.

the austere virtue concentrated in Port Royal, and afterwards stigmatized as Jansenism, was becoming scandalized at the growing laxity of casuistry and probabilism. In 1639 the Sorbonne condemned a number of propositions contained in the *Somme des Pechez* of Père Estienne Bauny, S.J., among which was one asserting that servants who have been obliged to agree to inadequate wages can steal to make up what they consider to be the deficiency.* Pascal, of course, in his cruel satire, did not neglect the opportunity which this teaching afforded, and he made merry over a case, occurring in 1647, in which a certain Jean d'Alba, a servant in the Jesuit Collége de Clermont, was detected in stealing, and, on his trial at the Châtelet of Paris, claimed that thirty crowns were due him, and alleged this doctrine in his defence, much to the disgust of the good fathers, who hastened to disavow it. The court apparently admitted the truth of his allegations, for it discharged him with a reprimand and restored to him all his personal effects, merely enjoining him to return to his home.† When, in 1656, the parish priests of Paris and Rouen presented for condemnation, to the assembly of the Gallican clergy, a series of propositions drawn from Père Bauny's book, this was not omitted; and when the Jesuit Pirot, in his unfortunate *Apologie des Casuistes*, was so ill advised as to assert " que les valets qui ne sont pas contents de leurs gages peuvent se payer de leurs mains," this was included among the errors extracted from that work and condemned by various French bishops in 1658 and 1659.‡ In 1657, moreover, at the instance of the Bishop of Ghent, the University of Louvain condemned a series of propositions including this.§

The pressure on the Holy See to impose a check on the audacious and alarming progress of laxity among the moral-

* Antoine Arnauld, Morale des Jésuites, p. 186 (Cologne, 1667).

† Provinciales, Lettre VI.—Extraits des Assertions dangereuses, etc. Paris, 1762, T. III. p. 287. It is observable that Père Daniel in his elaborate rejoinder to Pascal (*Entretiens d'Eudoxe et de Cléandre*) discreetly avoids all allusion to this subject.

‡ Arnauld, *op. cit.*, pp. 288, 379, 614, 704, 737.

§ D'Argentré, Collect. Judic. de novis Erroribus, III. II. 286.

ists at last met with a measure of success. In 1665 and 1666 Alexander VII. condemned a series of forty-five propositions, and in 1679 Innocent XI. followed this with a list of sixty-five more. Among the latter was included the assertion that household servants can steal from their employers what they consider sufficient to equalize their wages with their services.* As this was the only condemned proposition connected with occult compensation, by implication the equally demoralizing practices taught by Tamburini and others were tacitly approved, although Innocent, in the exordium of his decree, disclaimed responsibility for all propositions not explicitly condemned. Although excommunication, removable only by the pope, was imposed on all who should teach or defend the forbidden doctrines, the casuists were not accustomed to pay more respect to papal decrees than might be shown by their ingenuity in evading or arguing them away. It was held that Innocent only forbade the servant from compensating himself at his own estimation; he continued therefore to be told that he could steal without sin if his wages were unpaid, or if, pressed by necessity, he had hired himself at too low a rate, and, with a singular lack of humor, he was advised to consult his confessor or some "prudent man" as to the amount that he should pilfer. This has continued, up to the present time, to be the doctrine of the predominant laxer school of moral theologians.†

---

* "Famuli et famulæ domesticæ possunt occulte heris suis surripere ad compensandam operam suam quam majorem judicant salario quod recipiunt."—Innoc. PP. XI. Decr. *Sanctissimus*, 2 Mart. 1679, Prop. 37.

† Viva Comment. in Prop. 37 Innoc. XI. nn. 12, 13; Ejusd. Cursus Theol. Moral. P. III. Q. vi. Art. 3, n. 8.—Zuccherii Decisiones Patavinæ Mart. 1708, Q. ii. nn. 36–48.—Arsdekin Theol. Tripart. P. III. P. ii. Tract. 5, cap. 7.—Sporer Theol. Moral. Tract. v. cap. 5, nn. 83–4.—La Croix Theol. Moral. Lib. III. P. i. nn. 971–4.—Kresslinger Declaratio Propos. Damnat. n. 96.—Felicis Potestatis Examen Ecclesiast. T. I. nn. 2643–8.—Salmanticens. Cursus Theol. Moral. Tract. XIII. cap. 1, nn. 315–17.—S. Alph. de Ligorio Theol. Moral. Lib. III. n. 522; Ejusd. Istruzione Pratica per i Confessori, cap. vii. nn. 10–11.—Manzo Epitome Theol. Moral. Tract. *de Restitutione* nn. 154–6 (Neapoli, 1836).—Gury Compend. Theol. Moral. I. n. 623.—Varceno Compend. Theol. Moral. Tract. XIII. P. ii. cap. 3, Art. 1, § 2 (Aug. Taurin. 1889).

Bonal, however, restricts it to cases where the servant has performed extra

With regard to occult compensation in general, the absence of any further allusions to it among the propositions con-

---

work at the desire, expressed or implied, of the employer.—Institt. Theol. Moral. Tract. *de Justitia* n. 180 (Tolosæ, 1882).

The rigorist school, which has become nearly extinct, under the predominant influence of Liguori and his followers, naturally claims that the condemnation by Innocent XI. applies to all domestic pilfering. See Summa Alexandrina P. IV. n. 733.—Antoine Theol. Moral. Tract. *de Justitia* cap. 5, Q. 9.—Th. ex Charmes Comp. Theol. Univ. P. I. Tract. XV. cap. 4, § 3, Q. 8.—Alasia Theol. Moral. *De Restitutione* Diss. I. n. 22 (Taurini, 1834).—Zenner Instructio Practica Confessarii, § 333 (Viennæ, 1857).

Pontas, though strongly inclined to rigorism and hedging around occult compensation with almost impracticable conditions, is disposed to make exceptions in favor of servants. He holds the opinion, which is not universal even among the laxists, that a son who serves his father without pay can compensate himself (Pontas, Dict. de Cas de Conscience, s. v. *Compensation* c. 5. Cf. Viva, Cursus Theol. Moral. P. III. Q. VI. Art. 3, n. 10).

Pontas (*loc. cit.* c. 10) gives the details of a case submitted to him for decision in 1697 which reads like a chapter from Le Sage and throws so curious a side-light upon fashionable life in Paris that it may be worth repeating. A man entered the service of a woman of quality as a lackey and served for eleven years without wages or reward. He was then promoted to valetship, with a promise of 100 livres a year, but when she died five years later he had received only 150 livres. To compensate himself he managed at her death to steal a bag containing 1600 livres, and was retained as valet by her married daughter, with the promise of 150 livres a year. He served her for eight years without payment, as she habitually lost at cards the money given to her by her husband for the servants' wages; moreover he lent her 300 livres, which she never returned, and 2000 to her brother, who died insolvent, besides spending 200 in repairs to her country-seat. She kept a *table ouverte pour le jeu*, where the winners were expected to give to the attendant a gratification to pay for the cards and candles; according to custom this was a perquisite of the valet, but she made him account to her for it, and he had thus paid over to her 4000 livres, managing, however, to retain 1000 for himself, and he had in addition pilfered to the amount of 600 livres. He still remained in her service without expectation of better pay in the future, but he desired a settlement with his conscience. Pontas decided that he ought to refund the 1000 livres retained from the gratifications, less the cost to him of the cards and candles, also the 600 livres of stealings and the 1600 taken at the death of his first mistress, less the loan of 300, the 200 spent on the country-seat, and the arrears of wages due on his first and second terms of service as valet. He was also entitled to wages for the first eleven years of unpaid service, which should be settled in court or by the judgment of a prudent man. The loan of 2000 livres to the deceased brother was not to be taken into consideration.

The natural deduction from all this is that the system of occult compensation

demned by Alexander VII., Innocent XI., and Alexander VIII. during the last half of the seventeenth century, left the subject open to the speculations of the theologians. The Jansenist movement was the expression of the opposition of the more rigorous party, shocked at the prevailing fashionable laxity of the casuists, and two schools formed themselves, which maintained an active contest for more than a century. As a rule, the laxer teachers, known as probabilists, favored the extension of occult compensation, while the more rigid probabiliorists endeavored to restrict or suppress it. Occasionally, it is true, we find a probabilist like Arsdekin who looks on it askance and urges that the cases are very rare in which it can be employed,* or a probabiliorist like Wigandt who admits it, subject to the strict observance of the established conditions.† As a rule, however, the probabilists inclined to the largest liberty. Zuccheri argues away all the limitations with which the earlier moralists had sought to guard it against abuse, and the most eminent theologians of the laxer school adopted the views of Tamburini; it could even be used for debts not yet due if there were risk of their non-payment at maturity, and also when claims were not certain but only probable. In spite of the condemnation by Innocent XI. of perjured oaths with mental restrictions, the thief, if suspected, could swear to ignorance, and the practice was even extended to priests who had been compelled to accept an inadequate fee for celebrating

---

was tacitly accepted by all parties. Employers were careless as to paying wages, knowing that the servants stole, and servants continued to serve without pay, satisfied with their stealings.

It is perhaps worth noting that a recent *Kathedersocialist* ("A League of Justice," by Morrison I. Swift, Boston, 1893) teaches the same doctrine: "people who are meagrely paid for their services to the rich would be quite justified in stealing from them."

* Arsdekin Theol. Tripartita P. II. P. ii. cap. 7. At the same time he says that if a thing is detained unjustly it can be recovered either secretly or by force (Ibid. P. III. P. ii. Tract. 5, cap. 7). This, as we have seen, was the original starting-point of the system. It is now, however, properly distinguished as *recuperatio*, in contradistinction to *compensatio* (Bonal, op. cit., Tract. *de Justitia* n. 179).

† Wigandt Tribunal Confessar. Tract. VII. Exam. vi. n. 129. See also Antoine Theol. Moral. Tract. *de Justitia* c. 5, Q. 8.

mass, or who had not been paid for what they celebrated.* When the moral teachers were thus liberal it was not likely that the people would be over-nice in the exercise of the privileges accorded to them. Corella was no rigorist; he limits the conditions to only two—that the debt shall be certain and be overdue—and we therefore may well believe him when he tells us that the confessor will find many irregularities committed in this matter. Some, he says, when they think that an injury has been done to them, without taking the trouble to verify it, will steal something; others, when the debt is certain, will steal in excess of it; others again, when they lose anything, will compensate themselves by stealing from any one whom they suspect of having taken it.† Roncaglia, a moderate probabilist, adds his testimony to the caution which the confessor should exercise in admitting the justice of the compensations which servants and peasants are accustomed to allow themselves, for they are wont to do so on grounds not defensible.‡ The whole subject was a matter well fitted to arouse public indignation, and when, in 1762, the Parlement of Paris desired popular support in its movement for the suppression of the Jesuits, and caused to be compiled a collection of the lax doctrines taught by the theologians of the Society, occult compensation and theft furnished material for a section of formidable length.§

The rigorist school evidently were not without justification in endeavoring to abolish, or at least to limit strictly, the whole

* Zuccherii Decisiones Patavinæ Mart. 1708, Q. ii. nn. 8–26, 30.—Salmanticens. Cursus Theol. Moral. Tract. XIII. cap. 1, nn. 318–24.—Viva Comment. in Prop. 37 Innoc. XI. n. 13; Ejusd. Cursus Theol. Moral. P. III. Q. vi. Art. 3, nn. 1–12.—Sporer Theol. Moral. Tract. v. cap. 5, nn. 69–79.—La Croix Theol. Moral. Lib. III. P. i. nn. 962–8.

† Corella, Pratica del Confessionario, Tratt. VII. cap. iv. P. 7, nn. 67–78 (Parma, 1707). This work was one of the most popular of the eighteenth century. Besides more than twenty editions in the original Spanish, there were repeated issues of Italian and Latin translations. The latest I have met with is of Vienna, 1757. It was twice placed on the Index, in 1710 and 1712 (Index Benedicti XIV., 1758, p. 67), without interfering with its popularity.

‡ Roncaglia Universa Moralis Theol. Tract. XIII. cap. ix. *ad calcem.*

§ Extraits des Assertions dangereuses et pernicieuses que les soi-disans Jésuites ont soutenues, etc. Paris, 1762, T. III. pp. 252–396.

theory of occult compensation. Apparently the earliest to place himself on record against it was the Jesuit Elizalde, whose treatise *De recta Doctrina Morum* appeared from 1670 to 1684 under a pseudonym and without the knowledge of his superiors.* Noël Alexandre abstains from all reference to it, except with regard to servants; apparently he was willing to allude only to that on which he could quote a papal condemnation.† Matteucci asserts that he who compensates himself commits mortal sin, though he is not obliged to make restitution if he has strictly observed all the conditions, but confessors are directed to inquire of the thief whether in the act he did not feel some doubt that suspicion might fall on an innocent third party, in which case he must restore the article stolen, for, though he had a right to take it, he had no right in taking it to expose another to risk.‡ The rigorists, in fact, had a narrow path to tread. In the bitter controversy between the rival schools they were accused of Jansenism and of throwing unnecessary obstacles in the path to salvation; they could not utterly deny a custom which had the sanction of centuries, and they were reduced to nullifying it as far as they could in practice. Thus Habert fairly states the common opinion justifying occult compensation under the customary conditions, but he adds that these can rarely occur, for there scarce can be absence of danger of scandal or defamation; the confessor should never advise it, for there would be a shocking scandal if the thief should be caught and condemned to death and should plead that he only acted under the counsel of his priest; if consulted, the confessor should say that it is commonly affirmed under the requisite conditions, but that it is full of danger and is to be avoided.§ Reiffenstuel contents himself with stating the conditions fully and pointing out the attendant risks, for judges are wont to punish such compensa-

* Concina Theol. Christiana contracta Lib. VI. Diss. I, cap. 5, n. 10.—De Backer, I. 283.

† Summa Alexandrina P. IV. n. 733.

‡ Matthæucci Cautela Confessarii Lib. II. cap. xxi. nn. 31–33 (Venet. 1710).

§ Habert Theol. Dogmat. et Moral. *De Injustitia* c. IX. § 5, Q. 8, 9.

tion as theft.* Reuter advises the confessor to discourage servants from compensating themselves, for the conditions can rarely be clearly fulfilled.†

As the general discussion waxed hotter between the contending schools, the rigorists took a bolder position. The Dominican Daniele Concina, who devoted his life to the vain endeavor to stay the triumphant advance of probabilism, gives the customary list of conditions, which, he says, are rarely enforced in practice, for the moderns have so relaxed them that they are reduced to nothing; he laughs at the evasions with which Viva and La Croix nullify Innocent XI.'s condemnation of pilfering by servants. He admits that he cannot absolutely reject the opinions of so many eminent theologians in favor of occult compensation, but he argues forcibly against it as subversive of law and justice, as overriding the laws of the land, constituting a man a secret judge in his own cause, and opening the way to the violation of all law, human and divine, giving occasion to frauds and thefts and disturbing the social order; it is condemned, he says, in the secular courts, and why should it be permitted in the courts of conscience?‡ Concina's fellow-Dominican and ally, Gianvincenzo Patuzzi, is equally outspoken. He devotes much space to this subject, and points out in full detail the results of the teaching of the casuists in authorizing theft and destroying confidence between man and man, especially in the relations between employer and employed.§ Another systematic theologian of the same school treats the subject briefly, stating the usual conditions, and warning the confessor that he is never to advise it and rarely to permit it.‖

These efforts were fruitless against the overshadowing authority of St. Alphonso Liguori, who, though he professed to be not strictly a probabilist, nevertheless inclined almost

---

* Reiffenstuel Theol. Moral. Tract. IX. Dist. 5, nn. 117–18.

† Reuter, Neoconfessarius instructus, P. II. cap. vi. Q. 2, n. 4.

‡ Concina Theol. Christ. contracta Lib. VI. Diss. 1, cap. 5 (Bononiæ, 1760).

§ Lettere di Eusebio Eraniste, Lett. v. VI. (Venezia, 1761, Tom. I. pp. 183–219).

‖ Jo. Ant. Cæsaremontani Theol. Moral. Tract. VI. Quæst. vii. Quær. 15 (Venetiis, 1772).

invariably to the laxer side. He fully admits the principle of occult compensation; he cites Tamburini and La Croix, and quotes without dissent the opinion of the Salamanca theologians and other weighty authorities in favor of its application when the claim is only probable, though in his instructions to confessors he imposes three conditions,—that the debtor be not injured, that the debt be certain, and that satisfaction cannot be obtained otherwise.* This enlarged greatly the opportunities for exercising the privilege, for it ignored the factor of danger to the thief or to innocent third parties, on which the rigorists relied to prove that it could rarely be employed; but in fact it is necessary to eliminate these considerations if servants are to be allowed to compensate themselves, as Liguori emphatically states that they can. His beatification in 1816 and canonization in 1839, after exhaustive examination of all his writings to detect any possible errors or imperfections, and his final exaltation in 1870 to the dignity of a Doctor of the Church, the decision of the Papal Penitentiary in 1831 that all confessors can safely follow blindly whatever they find in his works, without troubling themselves to investigate his reasons, and the laudations of successive popes who place him among the foremost of those whom God has raised up for the illumination and adornment of the Church, give him irrefragable authority, against which opposition is vain.† The rigorists, moreover, were discredited by stigmatizing them with the hated name of Jansenists, and it was officially declared that one of the chief merits of his great work on Moral Theology was that its appearance terrified the Jansenists like a stroke of lightning and inflicted on them a mortal wound.‡ Since then rigorism and probabiliorism, discountenanced by the ruling influences in the Church, have steadily declined. Some sixty years ago, Alasia, who was a probabiliorist, sought to limit occult compensation as much as possible; it

* S. Alph. de Ligorio Theol. Moral. Lib. III. n. 521.—Ejusd. Istruzione Pratica, cap. X. n. 21.

† Concessionis Tituli Doctoris I. 23-4; IV. 6 (Romæ, 1870).—Vindiciæ Alphonsianæ, pp. x. sqq. (Romæ, 1873).

‡ Concessionis Tituli Doctoris I. 10.

is, he says, inimical to the public good, for it opens a wide path for thefts, scandals, and duplicate payments, and he insists, as an additional condition, that it must never be practised without the advice of a learned and pious man.* Similarly, Bishop Zenner, who about forty years ago was vicar-general of Vienna, insists on all the old conditions, and points out that their coexistence is exceedingly rare, wherefore the confessor is never to advise it, for it can scarce ever be without danger of scandal or defamation; when a penitent, however, has thus compensated himself, he is not required to make restitution.†

On the other hand, the modern text-books of moral theology which are almost universally used in the seminaries are based upon Liguori and teach his doctrines. Cardinal Gousset defines occult compensation to be lawful when through lack of evidence a debt cannot be proved and yet is certain, when the debtor refuses a settlement, or when the object stolen belongs to the thief and he does not take too much.‡ Archbishop Kenrick only says that it is a venial sin to have recourse to it when other means are available, unless judicial proceedings are expensive or tardy, or there is some other weighty reason.§ Subsequent authorities are not wholly in accord with each other as to the conditions, though they are all much less rigid than those prescribed by the older theologians, and the slight differences between them are important only as indicating the substratum of uncertainty in the minds of the writers. An opening is even made for claims of doubtful validity. Gury and Guarceno require only what is called "moral certainty," which in the mind of a claimant is a term of elastic capabilities, while Bonal states that if there is doubt the theft should be reduced proportionately,—though he admits that this is a procedure full of peril. Marc is more rigid, and requires the debt to be certain, though there is no necessity of claiming it at law if this should entail expense. A very wide extension is further given to occult compensation in the general assent

* Alasia Theol. Moral. *De Restitutione* Diss. I. nn. 19–22 (Taurini, 1834).

† Zenner Instructio Practica Confessarii § 333 (Viennæ, 1857).

‡ Gousset, Théologie Morale I. n. 777 (Paris, 1850).

§ Kenrick, Theol. Moral. Tract. III. n. 167.

to the proposition that it is permissible in cases where a man is condemned by court to pay a debt which he has not incurred or which he feels certain that he has already paid.* In the complication of human transactions there are few defeated defendants who will not range themselves with this class, while defeated plaintiffs can assign judicial partiality as a similar justification.

The practical application of occult compensation can perhaps best be understood through a few examples furnished by recent casuists.

A man's ass is stolen; it escapes from the thief and commits damages for which the owner is forced to pay. This is unjust, and he can compensate himself secretly.

A man who is treated unjustly but legally in the division of an estate with his sisters compensates himself in the distribution of the assets. He is within his rights in so doing, but we are told that it is dangerous unless he first consults some honest man as to the amount to be secreted. After it is done, however, the confessor had better let it pass without requiring him to make restitution.

A servant breaks a valuable piece of glassware, and his employer deducts the value from his wages; if the breakage was unintentional he can compensate himself by stealing.

A. borrows a hundred napoleons from B., and meeting him promises to send the amount to him the next day, whereupon B. confidingly gives him a receipt. Now, B.'s father had died owing a similar sum to A.'s father, wherefore A. refuses to fulfil his promise, and when sued exhibits the receipt and swears that he has paid the debt. B. is defeated and cast in the costs. A.'s conduct is perfectly justifiable throughout.†

A peasant woman confesses to stealing her neighbors' chickens, and alleges four reasons—I. that her chickens are

---

* Gury Compend. Theol. Moral. I. nn. 622–5.—Bonal Institt. Theologicæ Tract. *de Justitia* nn. 180–1.—Varceno Comp. Theol. Moral. Tract. XIII. P. ii. cap. 3, art. 1, § 2.—Miguel Sanchez, Prontuario de la Teología Moral, Trat. XX. Punto vi. n. 1.—Marc Institutiones Morales Alphonsianæ nn. 916–18 (Romæ, 1893).—Pruner, Lehrbuch der katholischen Moraltheologie, p. 680 (Freiburg i. B. 1883).

† Gury Casus Conscientiæ I. 106, 499, 500, 573, 575, 576–8 (Ratisbonæ, 1865).

lost and she takes her neighbors', II. that she knows her neighbors steal hers, III. that the chickens which she stole consorted with her own when young and ate her food, IV. that the neighboring chickens damage her garden. Of these the first and third are pronounced insufficient, while the second and fourth justify her.*

HENRY CHARLES LEA.

PHILADELPHIA.

THE REALITY OF THE GENERAL WILL.

"There is often a great difference between the will of all and the general will; the latter looks only to the common interest; the former looks to private interest, and is nothing but a sum of individual wills; but take away from these same wills the plus, and minus, that cancel one another, and there remains, as the sum of the differences, the general will." "Sovereignty is only the exercise of the general will." †

THIS celebrated antithesis, the statement of which I have translated from Rousseau's own words, has the effect of setting a problem to which Rousseau himself scarcely finds an answer. The problem is emphasized by the various reasons and indications which make it difficult to believe that the action of any community is a mere sum of the effects of wholly independent causes operating on a number of separate individual minds. No doubt, the action of a community sometimes is, and often appears to be, the sum of effects of such independent causes. One man gives a certain vote because he hates Mr. A.; another man gives the same vote because he thinks Mr. B. will do something for his trade; and a third gives the same vote because of some one out of a thousand possible social reforms which he thinks the man he is voting for will help or will hinder, as the case may be. Now, assuming these causes to be independent of one another, the direction in which they will sum up is a question of chance. Of course it is determined by causation, but it is not determined by any

---

* Bertolotti Sylloge Casuum I. 147 (Romæ, 1893).

† Rousseau, "Contrat Social," Book II., chap. i. and chap. iii.